

BURBANK ARTS BEAUTIFICATION PROGRAM
Artist Agreement (BWP Padmounted Electrical Equipment Boxes)

This agreement is made and entered into between the City of Burbank (hereinafter "City") and _____ selected to participate in the Burbank Arts Beautification Project (hereinafter "Artist").

1. Preparation of utility boxes and painting requirements. After cleaning and priming the area with biodegradable cleaner and primed with water-based primer, Artist will use paint type as set forth herein and comply with Burbank Water and Power (BWP) Guidelines, in effect as of the date of this Agreement, as well as any Guidelines that may be modified from time to time. A copy of the current Guidelines are attached as Exhibit A. If there are any inconsistencies between the Guidelines and this Agreement, the Guidelines shall prevail.

a. PAINT TYPE: premium high solids 100% acrylic latex exterior wall and trim paint; low-sheen, eggshell or satin finish; minimum 1.5 mil dry thickness per coat.

b. ANTI-GRAFFITI SEALANT: The Guidelines in no. 4 require two coats of an anti-graffiti sealant.

2. Materials and Supplies. Artist will purchase the needed paint and supplies, including paintbrushes, paint rollers, rolling pans, drop cloth, masking tape, latex gloves, and cups for blending/mixing paint. Artist must provide his/her own additional supplies if needed.

3. Artists obligations. Artist will be required to have the utility boxes cleaned, prepped and primed prior to painting. Artist shall further register as a City volunteer prior to prepping or painting.

4. Assigned box. Artist will paint the utility box assigned to them by the City which is _____. Painting of the box must be started on _____ and must be completed no later than _____. Painting may only occur during the hours of 7 a.m. to 7 p.m. If Artist needs more time to apply the anti-graffiti sealant, this agreement shall automatically be extended and the additional time and day shall be noted below: _____. A minimum sidewalk clearance of four feet must be adhered to at all times.

5. Artwork on Box. Artwork must include all visible sides of the utility box including the top, but must not touch the warning labels.

6. Pre-painting inspection. The Artist shall schedule and attend a Parks and Recreation (P&R)/BWP inspection of their respective utility box at least 48 hours prior to commencing work. During this inspection P&R/BWP staff will identify electronics,

equipment, and other facilities on the exterior of the cabinet which shall not be painted, including:

- a. official plaques, stickers, or identification numbers
- b. keyholes or keyhole covers so they cannot be opened
- c. windows, vents, or viewing ports

7. Damage during painting. If any component of the City's systems is damaged as a result of the Artist's work, the Artist shall arrange for a licensed contractor to repair the damage at the Artist's sole expense.

8. Restrictions during painting. The Artist shall provide for City maintenance, operations, and emergency access to their respective utility box at all times.

9. Signature. Artist recognition via signature on the utility box may be no larger than 3" x 5".

10. Ownership of Artwork. The completed artwork will be the property of the City, which retains the right to remove, modify, or replace the utility box, components of the utility box, or the artwork if necessary without compensation to Artist. Artist further acknowledges that City has the right to use the work product, and any portion thereof, for any and all purposes throughout the world, including, but not limited to, advertising, promotion, publicity, and merchandising, and that no further permission or money shall be payable to Artist in connection with any such use.

10.1. Artist conveys to City that City shall own all right, title, and interest in and to all work product created by Artist, including but not limited to, the worldwide copyrights in the artwork. Artist agrees to execute any documentation required by City if copyright registration of a work is desired by City. Artist further conveys to City all derivative uses of the work product.

10.2. Artist represents and warrants that all work product shall be original and not subject to any other ownership claims by third parties. Artist indemnifies and defends City as to any damages arising out of or relating to a breach of this warranty and representation

10.3. The City may use images of the artwork for promotional purposes.

11. Restrictions on artwork. Artwork may not contain advertising, religious art, sexual content, negative imagery, convey political partisanship or include any hidden, subliminal or camouflaged messages or statements of any kind or nature.

11.1. Artwork may not include any breach of intellectual property, trademarks, brands, images of illegal activity or involve the attachment of any object(s) to the box.

12. Damage to Artwork. (Note: This section replaces the Guidelines no. 8.) If possible, the Artist has the first option to repair artwork if damaged. The City may

repair, remove, or modify damaged artwork if Artist is unavailable, or if City deems that immediate repair is necessary. Any repair or maintenance that does not need to be repaired immediately must occur in accordance with this section. P&R representatives will notify Artist if repair or maintenance is needed. In the alternative, Artist may contact P&R and inform them of such need. P&R will provide Artist with thirty (30) days if possible, to arrange with BWP times to work on the box. City reserves the right to request insurance prior to performing any work on the box, and to require a separate entry agreement. Should graffiti occur on the artwork, the City may take immediate steps to remove it, or may notify Artist to remove it, the decisions shall be at its sole discretion of City. All emergency work is exempt from the process set forth in this section. Artist obligation to repair damaged artwork shall terminate after three years.

13. Waiver of Visual Rights Act. Artist hereby waives as against City, and any and all of its respective successors in interest, any rights which Artist may have under California Civil Code Sections 987, et seq., the Federal Visual Rights Act, and all other similar laws, and agrees that under no circumstances will title to the Artwork will revert to Artist, its heirs, legatees, assignees or personal representatives.

14. Payment. The City will pay \$1,000.00 per box to the Artist, 50% upon signature of this Agreement, and 50% within thirty (30) days upon completion of the utility box artwork. It is the Artist's responsibility to contact the P&R Public Art Coordinator at the time of completion. Upon completion, Artist is responsible to maintain the box for a period of three years.

15. Indemnification. Artist shall defend, indemnify, protect and hold harmless the City, or their elected and appointed officers, employees, members or agents from and against all claims for damages, liability, cost and expense (including without limitation attorneys fees) arising out of or alleged by third parties to be the result of the negligent acts, errors or omissions or the willful misconduct of the Artist, and Artist's employees, subcontractors or other persons, agencies or firms for whom Artist is legally responsible in connection with the execution of the work covered by this Agreement. Artist shall have no duty to indemnify or hold harmless the City if claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arise from the sole negligence or sole willful misconduct of the City. Artist's obligations shall survive the termination of this Agreement.

16. Release. To protect the City, Artist shall execute a Release from Liability before participating in the Burbank Arts Beautification Project, which is attached hereto as Exhibit "B", and incorporated herein by this reference.

17. Volunteer status. Artist is acting as a volunteer. Artist is not and any of the Artist's agents, employees or representatives are, for all purposes under this agreement, an independent contractor and shall not be deemed to be an employee of the City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits.

18. Termination. The City may terminate this Agreement at any time and for any reason. If the Agreement is terminated by the City after the painting of a utility box has commenced, Artist shall be entitled to reasonable compensation for work performed to date, minus any offset representing the City's damages should termination result from Artist's breach of contract. Artist hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth herein. If City terminates this Agreement, City may choose to maintain the box, or may choose to paint over or remove the box, in its sole and absolute discretion. Artist may terminate at any time before the painting is complete. If such happens, Artist shall reimburse City of any money provided to it.

19. This section applies only to the utility box located on Cypress Avenue near the Colony Theater. Artist understands that this utility box is located on private property, specifically controlled by Crown Realty and leased to the City and subleased to the Colony Museum. As such, all of the protections applicable to City in sections 1-18 shall also apply to the private parties. Artist may be required to execute additional agreements required by the private owners. Any such agreement will be provided to Artist before Artist signs this Agreement.

"ARTIST"

"CITY"

City of Burbank, a municipal corp.

Name _____
(Please Print)

By _____
Name _____
Title _____

Dated _____

Dated _____

Approved as to Form
Office of the City Attorney

Attest:

Mary F. Riley, Sr. Asst. City Attorney

Zizette Mullins, CMC, City Clerk

ATTACHMENT A

BWP Guidelines for Painting BWP Padmounted Equipment

[attached separately]

Reference
Only

ATTACHMENT "B"

RELEASE FROM LIABILITY FORM

Reference
Only

Burbank Arts Beautification Program
BWP Padmounted Electrical Equipment Box Art

RELEASE FROM LIABILITY

PERSONAL INFORMATION *(Please print)*

Full Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

Emergency Contact: _____ Phone: _____

WAIVER ASSUMPTION OF RISK AND LIABILITY RELEASE

For and in consideration of *(Name)* _____ participation in the Burbank Arts Beautification program (the "Program"), I hereby voluntarily release, discharge, waive, and relinquish any and all actions or causes of action for personal injury, property damage or wrongful death against the City of Burbank or any of its officers, agents, servants or employees, whether the same shall arise by the negligence of any of said persons, or otherwise, occurring to me and/or my children as a result of the participation in the Program/activities incidental thereto wherever or however the same may occur and for whatever period said use and/or programs/activities may continue.

IT IS MY INTENTION BY SIGNING THIS INSTRUMENT, TO EXEMPT AND RELIEVE THE CITY OF BURBANK, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES FROM LIABILITY FOR PERSONAL INJURY, PROPERTY DAMAGE OR WRONGFUL DEATH CAUSED BY NEGLIGENCE. I am fully aware of the risk and hazards inherent in my and/or my child's participation in the City's Program/activities. I understand that serious accidents can occur during the participation in the City's Program/activities and that participants can suffer serious injury or even death. I realize that NO MEDICAL INSURANCE IS PROVIDED BY THE CITY OF BURBANK FOR ANY INJURIES THAT MAY OCCUR TO ME AND/OR MY CHILD DURING THE USE OF THE CITY'S FACILITIES AND/OR DURING PARTICIPATION IN THE CITY'S PROGRAM/ACTIVITIES. Nevertheless, I hereby elect voluntarily to participate and/or allow my child to use the City's facilities and/or participate in the City's Program/activities and assume all risk of loss, damage, or injury that may be sustained

to me and/or my child during the use of the City's facilities and/or during participation in the City's Program/activities, or any activities incidental thereto.

I agree that in the event any claim for personal injury, property damage, or wrongful death shall be prosecuted against the City of Burbank, or any of its officers, agents, servants, or employees as a result of my child's participation in the City Program, I shall indemnify and save harmless the City of Burbank or any of its officers, agents, or employees from any and all such claims or causes of action by whomever or wherever made or presented.

I understand that this RELEASE, INDEMNIFICATION AND ASSUMPTION OF RISK AGREEMENT shall apply not only to me and/or my children but also to my and/or their heirs, executors, administrators, next of kin, assigns, and successors.

I ACKNOWLEDGE THAT I HAVE READ THE FOREGOING AND AM COMPLETELY AWARE OF THE POTENTIAL DANGERS INCIDENTAL TO MY AND/OR MY CHILD'S USE OF CITY'S FACILITIES AND/OR PARTICIPATION IN CITY'S PROGRAM/ACTIVITIES AND I AM FULLY AWARE OF THE LEGAL CONSEQUENCE OF SIGNING THIS INSTRUMENT.

_____ By my signature below, I hereby certify that I am eighteen (18) years of age or older.

_____ I am under the age of eighteen (18) years. My parent/guardian has read this form with me and completed the additional parent/guardian Waiver and Release.

Date _____

Name _____
(Please Print)

Signature _____

Name of Child _____
(if applicable)

Relationship to minor _____
(Please Print)